

A **Mardina Tiara bt Abdullah Emat @ Margaret ak Emat v
 Director of Jabatan Agama Islam Sarawak & Ors**

B HIGH COURT (KUCHING) — APPLICATION FOR JUDICIAL
 REVIEW NO KCH-13NCvC-22/10 OF 2016
 STEPHEN CHUNG J
 3 MARCH 2017

C *Civil Procedure — Judicial review — Application for leave — Applicant sought
 declaration that she was Christian — Applicant converted to Islam in Brunei
 Darussalam — Whether issues raised by applicant justified further argument on
 substantive motion*

D *Civil Procedure — Jurisdiction — High Court — Applicant applied for leave
 for judicial review and sought declaration that she was Christian — Applicant
 converted to Islam in Brunei Darussalam — Whether High Court had
 jurisdiction to hear application*

E *Islamic Law — Conversion — Conversion out of Islam — Applicant applied for
 leave for judicial review and sought declaration that she was Christian
 — Applicant converted to Islam in Brunei Darussalam — Whether High Court
 had jurisdiction to hear application — Whether Shariah Court in Sarawak and
 Jabatan Agama Islam Sarawak had jurisdiction over applicant's conversion*

G This was an application by the applicant for leave for judicial review seeking a
 declaration that she was a Christian; an order of mandamus to compel the first
 and/or second respondents to issue the letter of release from the religion of
 Islam to the applicant effecting the applicant's intention to be released from the
 religion of Islam; an order of mandamus to compel the third respondent to
 change the applicant's name from Mardina Tiara bt Abdullah Emat to her
H original birth name of Margaret ak Emat; and an order of mandamus to compel
 the third respondent to drop the applicant's religion Islam in her identity card
 and/or the records and/or particulars of the applicant's religion held at the
 National Registry to that of Christianity. The grounds for the application were:
I (a) that the applicant was an Iban who was born and raised as a Christian as
 both of her parents were Christians; (b) the applicant converted into Islam
 because of her marriage with her ex-husband Alwi bin Rajaie; and (c) that the
 applicant affirmed that notwithstanding her conversion, she was never a
 practicing Muslim and had always practiced and professed Christianity. She
 affirmed that she was baptised as an Anglican-Christian on 17 December 1995.

It must be noted that the applicant converted to Islam in Kuala Belait, Brunei Darussalam which was outside the jurisdiction of Sarawak. The issue for consideration was whether the issues raised by the applicant justified further argument on a substantive motion.

Held, dismissing the application for leave:

- (1) It is settled law that the question of whether a person is a Muslim or not is a matter falling under the exclusive jurisdiction of the Shariah Court. Therefore the High Court had no jurisdiction (see paras 12 & 16).
- (2) The Syariah Courts in Sarawak and the Jabatan Agama Islam Sarawak had no jurisdiction over the applicant's conversion out of Islam which was and registered in Brunei Darussalam. She should apply to obtain her release from Islam to the relevant authorities in Brunei Darussalam. After she has obtained her release from Brunei Darussalam that she is no longer a Muslim, then she can apply for such certification or declarations in Sarawak. In totality, the issues raised by the applicant did not justify further argument on a substantive motion (see paras 13, 15 & 17).

[Bahasa Malaysia summary]

Ini adalah permohonan oleh pemohon untuk izin bagi semakan kehakiman dengan memohon perisytiharan bahawa dia adalah seorang Kristian; perintah mandamus untuk memaksa responden pertama dan/atau kedua mengeluarkan surat perlepasan daripada agama Islam kepada pemohon dengan melaksanakan niat pemohon untuk dilepaskan daripada agama Islam; perintah mandamus untuk memaksa responden ketiga menukar nama pemohon daripada Mardina Tiara bt Abdullah Emat kepada nama kelahiran asalnya Margaret ak Emat; dan perintah mandamus untuk memaksa responden ketiga menggugurkan agama Islam di dalam kad pengenalnya dan/atau rekod-rekod dan/atau butir-butir agama pemohon yang terdapat di Pendaftaran Negara kepada agama Kristian. Alasan-alasan untuk permohonan adalah: (a) bahawa pemohon adalah seorang Iban yang dilahirkan dan dibesarkan sebagai Kristian kerana kedua-dua ibubapanya adalah beragama Kristian; (b) pemohon memeluk Islam kerana perkahwinannya dengan bekas suami Alwi bin Rajaie; dan (c) bahawa pemohon mengesahkan bahawa meskipun memeluk Islam, dia tidak pernah mengamalkan Islam dan sentiasa mengamalkan dan menganut agama Kristian. Dia mengesahkan bahawa dia dibaptiskan sebagai Anglican-Kristian pada 17 Disember 1995. Pemohon memeluk agama Islam di Kuala Belait, Brunei Darussalam yang berada di luar bidang kuasa Sarawak. Isu untuk pertimbangan adalah sama ada isu-isu yang dibangkitkan oleh pemohon menjustifikasikan hujahan selanjutnya atas usul substantif.

Diputuskan, menolak permohonan untuk izin:

- (1) Adalah undang-undang nyata bahawa soalan sama ada seseorang adalah

- A seorang Islam atau tidak bukan perkara terangkum di bawah bidang kuasa eksklusif Mahkamah Syariah. Oleh itu, Mahkamah Tinggi tidak mempunyai bidang kuasa (lihat perenggan 12 & 16).
- (2) Mahkamah Syariah di Sarawak dan Jabatan Agama Islam Sarawak tidak mempunyai bidang kuasa terhadap penukaran keluar daripada agama Islam pemohon yang mana adalah dan berdaftar di Brunei Darussalam. Dia sepatutnya memohon untuk mendapatkan perlepasan daripada agama Islam kepada pihak berkuasa relevan di Brunei Darussalam. Selepas dia memperolehi perlepasannya daripada Brunei Darussalam yang dia bukan lagi seorang beragama Islam, barulah dia dapat memohon untuk sijil atau perisytiharan sedemikian di Sarawak. Secara keseluruhannya, isu-isu yang dibangkitkan oleh pemohon tidak menjustifikasikan hujahan selanjutnya atas usul substantif (lihat perenggan 13, 15 & 17).]
- B
- C
- D

Notes

For cases on application for leave, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5950–5953.

For cases on conversion out of Islam, see 8(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 687–689.

For cases on jurisdiction of High Court, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 6165–6251.

Cases referred to

- F *Association of Bank Officers, Peninsular Malaysia v Malayan Commercial Banks Association* [1990] 3 MLJ 228; [1990] 1 CLJ Rep 33, SC (refd)
Azmi bin Mohamad Azam @ Roneey v Director of Jabatan Agama Islam Sarawak & Ors [2016] MLJU 1558; [2016] 6 CLJ 562, HC (refd)
- G *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1; [1991] 3 CLJ 2768, SC (refd)
George John v Goh Eng Wah Bros Filem Sdn Bhd & 2 Ors [1988] 1 MLJ 319 (refd)
Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal [2014] 3 MLJ 757, FC (refd)
- H *Jenny bt Peter @ Nur Muzdhalifah Abdullah v Director of Jabatan Agama Islam Sarawak & Ors and other appeals* [2017] 1 MLJ 340, CA (refd)
Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2007] 5 MLJ 101; [2007] 5 CLJ 253, FC (refd)
Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145, FC (refd)
- I *Mohd Syafiq Abdullah @ Tiong Choo Ting v Director of Jabatan Agama Islam Sarawak & Ors* [2016] 1 MLJ 434, HC (refd)
Petra Pek Chong Le @ Nur Shafiqah v Director Of Jabatan Agama Islam Sarawak & Ors [2014] MLJU 27, HC (refd)

Syarifah Nooraffyza bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors [2015] 10 MLJ 133, HC (refd) A

Legislation referred to

Federal Constitution art 11

Majlis Islam Sarawak Ordinance 2001 (Cap 41) Part VIII B

Syariah Courts Ordinance 2001 (Cap 42) s 10

*Chua Kuan Ching (Simon Siah, Chua and Chow Advocates) for the applicant.
Hisyamudin bin Roslan (Legal Officer, State Attorney General's Chambers) for the
first, second and fourth respondents.* C

*Leo ak Saga (Senior Federal Counsel, Federal Attorney General's Chambers) for the
third respondent.*

Stephen Chung J: D

[1] The applicant applied for leave for judicial review seeking the following orders:

- (a) a declaration that the applicant is a Christian; E
- (b) an order of mandamus to compel the first and or second respondents to issue the letter of release from the religion of Islam ('surat murtad') to the applicant effecting the applicant's intention to be released from the religion of Islam; F
- (c) an order of mandamus to compel the third respondent to change the applicant's name from Mardina Tiara bt Abdullah Emat to her original birth name of Margaret ak Emat; and G
- (d) an order of mandamus to compel the third respondent to drop the applicant's religion Islam in her identity card and/or the records and/or particulars of the applicant's religion held at the National Registry to that of Christianity.

[2] The grounds for the application are: (i) that the applicant is an Iban who was born and raised as a Christian as both of her parents are Christians; (ii) the applicant converted into Islam because of her marriage with her ex-husband Alwi bin Rajaie; and (iii) that the applicant affirmed that notwithstanding her conversion, she was never a practicing Muslim and has always practised and professes Christianity. She affirmed that she was baptised as an Anglican-Christian on 17 December 1995. H I

[3] The respondents opposed the application for leave. It was submitted that any person affected by the application may appear to raise legitimate objections: *George John v Goh Eng Wah Bros Filem Sdn Bhd & 2 Ors* [1988] 1

- A MLJ 319. The respondents submitted that the applicant converted to Islam in Kuala Belait, Brunei Darussalam which was outside the jurisdiction of Sarawak and they have no authority or jurisdiction over that conversion. It further submitted that in any event any questions involving Islam should be determined by the Syariah Court and not in this court. Therefore it submitted
- B that leave should not be granted because there is no arguable case and that the application is frivolous, vexatious and misconceived citing authorities: *Petra Pek Chong Le @ Nur Shafiqah v Director Of Jabatan Agama Islam Sarawak & Ors* [2014] MLJU 27; *Mohd Syafiq Abdullah @ Tiong Choo Ting v Director of Jabatan Agama Islam Sarawak & Ors* [2016] 1 MLJ 434; *Syarifah Nooraffyza bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors* [2015] 10 MLJ 133.
- C
- D [4] The applicant affirmed that she is an Iban, born in Rumah Lanyau, Pasai Siong, Sibu, Sarawak on 20 February 1979. Her father Emat ak Lidy and her mother Nipah ak Antas are both Iban. She was given the name of Margaret ak Emat. She said she was raised in a Christian family as both her parents are Christians. She was baptised as an Anglican-Christian on 17 December 1995.
- E [5] In her affidavit she said on 10 February 2003 she converted to the Islamic faith because of marriage to her ex-husband Alwi bin Rajaie (BICK 50664187). She was given the name of Mardina Tiara bt Abdullah Emat. They divorced on 27 August 2011. She said notwithstanding the conversion, she never practices the Islamic faith or religion during her marriage with Alwi bin Rajaie. She said in fact she always practices and professes Christianity notwithstanding her conversion.
- F
- G [6] She said on 15 June 2016 she went to Jabatan Agama Islam Sarawak at Sibu for the purpose of converting out of Islam. She met with an officer and was given a form to fill in, for the purpose of counselling. Over the years she has made one statutory declaration for the purpose of her application to Jabatan Agama Islam Sarawak to request for a letter of release from Islam and or a letter of no objection to come out from Islam.
- H [7] She said she did not receive any reply although over the years she has asked for such a letter. She said until now the department has refused to reply because the first and/or second respondents intentionally delayed or refused to issue the said letter of release and or letter of no objection and an abuse of power and infringement of her rights under art 11 of the Federal Constitution. She submitted that she has no other alternative and efficacious remedy available except by bringing this action.
- I
- [8] Counsel submitted that the above authorities cited by the respondents should be distinguished and should follow the case of *Azmi bin Mohamad*

- Azam @ Roneey v Director of Jabatan Agama Islam Sarawak & Ors* [2016] MLJU 1558; [2016] 6 CLJ 562 where the presiding judge held that the Majlis Islam Sarawak Ordinance 2001 did not make any provision in respect of matters relating to apostasy or conversion out of Islam and the right to choose his religion lies with the applicant himself and not the religious body. These cases cited should be read based on the facts of each case. In *Azmi bin Mohamad Azam's* case, he was ten years old when his parents converted to Islam and when he became an adult he decided to opt out of Islam because he was brought up in a Bidayuh Christian community. A
- [9] A remedy for judicial review is always at the discretion of the court. A person who is adversely affected by the decision of a public authority can apply for a judicial review of that decision. For an applicant to pass the 'adversely affected' test, the applicant has to at least show that he or she has a real and genuine interest in the subject matter: *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145. B C
- [10] At the leave stage, the guiding principles ought to be that the applicant must show prima facie that the application is not frivolous or vexatious and that there is some substance in the grounds supporting the application. At the leave stage, the threshold for granting of such leave is very low and the court should not embark on the substantial issues on merits. In this case the applicant is a person who has been adversely affected by the decision of the respondents. E
- [11] Although there is a two stage process, at the leave stage, the question is, do the issues raised by the applicant justify further argument on a substantive motion: see *Association of Bank Officers, Peninsular Malaysia v Malayan Commercial Banks Association* [1990] 3 MLJ 228; [1990] 1 CLJ Rep 33. F
- [12] It is settled law that the question of whether a person is a Muslim or not is a matter falling under the exclusive jurisdiction of the Syariah Court. It has been held that the only forum qualified to answer that question is the Syariah Court: *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1; [1991] 3 CLJ 2768; *Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal* [2014] 3 MLJ 757. G H
- [13] Further, although the applicant has applied for release from Islam from Jabatan Agama Islam Sarawak and has joined the respondents in this judicial review application, based on affidavit evidence, the applicant converted to Islam in Kuala Belait, Brunei Darussalam on 8 February 2003. She married her husband, a Muslim, on 28 February 2003 and divorced on 27 August 2011, in Brunei Darussalam. Although she applied and obtained a certification letter of Muslim convert from Jabatan Agama Islam Sarawak on 17 December 2003, this was to certify that she was a Muslim convert for her purposes in Sarawak. I

A Her conversion was and registered in Brunei Darussalam.

[14] The applicant submitted that the right to freedom of religion raises constitutional issue as opposed to jurisdiction issue. Both the civil and Syariah Courts are creatures of statutes and owe their existence to statutes. Section 10 of the Sarawak Syariah Courts Ordinance 2001 set out the jurisdiction of the Syariah Courts in Sarawak. However they are not given any specific jurisdiction to hear and determine an application by a Muslim to convert out of Islam. It is for the legislature and not for the court to try to remedy inadequacies in the law: *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101; [2007] 5 CLJ 253.

[15] Based on a reading of the Syariah Courts Ordinance 2001 and the Majlis Islam Sarawak Ordinance 2001, the Syariah Courts in Sarawak and the Jabatan Agama Islam Sarawak have no jurisdiction over her conversion out of Islam which was in Brunei Darussalam. She should apply to obtain her release from Islam to the relevant authorities in Brunei Darussalam. After she has obtained her release from Brunei Darussalam that she is no longer a Muslim, then she can apply for such certification or declarations in Sarawak.

[16] It has been held that although the Sarawak Syariah Courts Ordinance 2001 does not provide for the conversion in or out of Islam, Part VIII of the Majlis Islam Sarawak Ordinance 2001 provides for conversion to the religion of Islam and by implication the Syariah Courts have the jurisdiction to deal with conversion out of Islam. Even if the Syariah Courts were correct to state that they had no jurisdiction, it does not follow that the High Court has jurisdiction over the matter. It is now settled by authorities whether a person is a Muslim or otherwise is a matter under the exclusive jurisdiction of the Syariah Courts and therefore the High Court has no jurisdiction: *Jenny bt Peter @ Nur Muzdhalifah Abdullah v Director of Jabatan Agama Islam Sarawak & Ors and other appeals* [2017] 1 MLJ 340.

[17] Based on the facts of the case and the authorities referred to, the issues raised by the applicant do not justify further argument on a substantive motion unless the law has been amended or legislated or that a superior appellate court has decided otherwise. Therefore it would be futile for the leave to be granted. The application for leave is dismissed with no order as to costs but the applicant is to pay the allocatur fees.

Application for leave dismissed.

Reported by Dzulqarnain Ab Fatar